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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,891	08/20/2003	Steven M.H. Wallman	1061/6	6367
MICHAEL P. FORTKORT PC 13164 Lazy Glen Lane Oak Hill, VA 20171				
EXAMINER				
LOFTUS, ANNE				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/644,891

Applicant(s)

WALLMAN, STEVEN M.H.

Examiner

ANN LOFTUS

Art Unit

3692

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 28-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 28-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Status of the Claims

1. This action is in response to an amendment filed on 2/25/08. Claims 1-7 and 28-34 are pending. A provisional was filed 8/20/02.

Response to Arguments

2. Applicant's arguments filed 2/25/08 have been fully considered but they are not persuasive.
3. The applicant argues that Sanders teaches away from adjusting the riskiness of an investment by modifying the amount purchased on margin because Sanders teaches that margin investing is less desirable. Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or non-preferred embodiment. See *In Re Susi*, 169 USPQ 423 (CCPA 1971). A reference must be considered for all that it might suggest to one of ordinary skill in the art, and not just its primary thrust. Further, Sanders teaches in paragraph 84 page 9 computing credit limits and margin requirements for members. A person of ordinary skill in the art at the time of the invention would understand that the margin requirements are requirements for members to purchase securities on margin. Thus Sanders teaches purchasing on margin.

4. The applicant argues that the art fails to disclose determining an amount of a desired portfolio of assets/rights/liabilities that must be purchased on margin so that a riskiness characteristic of a resulting portfolio matches a user specified riskiness characteristic (from claim 1). Sanders teaches purchasing on margin as above. Rebane also teaches purchasing on margin (borrowed funds) in col 10 line 31. Rebane col 4 lines 37-50 teaches determining an amount of a desired portfolio of assets/rights/liabilities that must be purchased so that a riskiness characteristic (risk tolerance function) of a resulting portfolio matches a user specified riskiness characteristic.

Sanders also teaches in paragraph 46 page 4 that investors directly control risk and paragraph 48 that risk tolerance is customizable. Sanders teaches in paragraph 53 page 5 that an investor can increase the potential loss by a multiple of the investor's choosing. Because the multiple can increase the potential loss, it is a user specified riskiness characteristic.

The examiner further notes that a portfolio can consist of a single security, and a single security, such as a mutual fund, can be a portfolio.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application 2001/0042036 filed by 1/25/2001 by Sanders, in view of US Patent 6078904 filed 3/16/98 by Rebane.

As to claims 1-2 and 7, Sanders discloses a "method and system for investing in customizable investment products," comprising:

- [Claim 1] determining an amount of a desired portfolio of assets/rights/liabilities (see at least Figure 1, from at least "select terms" through at least "best price offer" in at least CybicBulls/Bears embodiment)
- purchasing the determined amount of the desired portfolio of assets/rights/liabilities on margin. (see at least Figure 1, "Order is executed")
- [Claim 2] selecting by a user a riskiness characteristic of a desired portfolio of assets/rights/liabilities. (see at least Paragraph 53)
- [Claim 7] providing a predetermined portfolio of assets, rights or liabilities; (see at least Paragraph 53)
- receiving a user specified riskiness characteristic and a user's investment funds; (see at least Paragraph 53)
- determining an amount of the predetermined portfolio of assets, rights or liabilities that must be purchased on margin so that a resulting riskiness characteristic of a resulting portfolio matches the user specified riskiness characteristic; and (see at least Figure 1, from at least "select terms" through at least "best price offer" in at least CybicBulls/Bears embodiment)

- purchasing the determined amount of the predetermined portfolio of assets, rights or liabilities on margin along with an amount of the predetermined portfolio of assets, rights or liabilities purchased with the user's investment funds. (see at least Figure 1, "Order is executed" and accompanying explanation in specification, Paragraphs 53-55)

Sanders does not explicitly teach that a riskiness characteristic of a resulting portfolio matches a user specified riskiness characteristic. Rebane teaches buying on margin (borrowed funds) as a known technique in col 10 lines 25-35. Rebane teaches a riskiness characteristic of a resulting portfolio matches a user specified riskiness characteristic in col 4 lines 37-50. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Sanders to add a riskiness characteristic of a resulting portfolio matches a user specified riskiness characteristic with predictable results and a reasonable expectation of success in order to allow traders to invest according to individual risk tolerance.

7. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanders in view of Rebane, and further in view of Homer et al. (2003/0009409).

As to claims 3 and 6, Sanders and Rebane disclose all of the limitations of parent claim 2, *supra*. Sanders further discloses where [Claim 6] the user interacts by entering a numerical value (see at least Figure 5, "customer picks a leverage factor between 5 and 20"). Sanders does not specifically disclose [Claim 3] *interacting with a graphical*

user interface. However, Horner discloses "systems and methods for providing risk/return measures for securities lending programs" which includes interaction with a GUI (see at least Figures 4-7). Since both Sanders and Horner relate to risk tolerance calculation, it would therefore be obvious to one of ordinary skill in the art at the time of invention to incorporate the GUI of Horner into the method and system of Sanders in order to provide improved usability.

8. Claims 28-30 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanders in view of Rebane and further in view of Horner et al. ('409).

Re Claims 28-30 and 33-34, Sanders and Rebane disclose all of the limitations in the corresponding method claims 1-2 and 7, *supra*. Sanders further discloses where [Claim 33] the user interacts by entering a numerical value (see at least Figure 5, "customer picks a leverage factor between 5 and 20"). Sanders does not specifically disclose [Claim 28] *a computer including a display and a user interface*, [Claim 30] *interacting with a graphical user interface*, and [Claim 34] *a processor*. However, Horner discloses "systems and methods for providing risk/return measures for securities lending programs" which include a PC (see at least Paragraph 49) and interaction with a GUI (see at least Figures 4-7). Since both Sanders and Horner relate to risk tolerance calculation, it would therefore be obvious to one of ordinary skill in the art at the time of invention to incorporate the GUI of Horner into the method and system of Sanders in order to provide improved usability.

9. Claim 4 and 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sanders in view of Rebane and Horner ('409) as applied to claims 3 and 30 above, and further in view of Nolan (5,754,873).

Sanders in view of Horner does not specifically disclose a *slider bar*. However, Nolan discloses a graphical user interface for scaling a block of text which "scaling preference can be selected using a graphical control, such as a slider bar or dial" (see Column 9, Lines 58-67). Since both Sanders in view of Horner and Nolan relate to graphical user interfaces, it would therefore be obvious to one of ordinary skill in the art at the time of invention to incorporate the slider bar interface element of Nolan into the investment system and method of Sanders in view of Horner in order to provide improved usability.

10. Claim 5 and 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sanders in view of Rebane and Horner ('409) as applied to claims 3 and 30 above, and further in view of Marks et al. (2001/0053944).

Sanders and Rebane in view of Horner does not specifically disclose an *arrow on a dial*. However, Marks discloses a graphical user interface for navigating internet audio which includes dials with arrows on them (see at least Figure 1). Since both Sanders in view of Horner and Marks relate to graphical user interfaces, it would therefore be obvious to one of ordinary skill in the art at the time of invention to incorporate the dials with arrows interface elements of Marks into the investment system and method of Sanders in view of Horner in order to provide improved usability.

Conclusion

11. While portions of interest have been indicated, all references should be considered for the entirety of their teachings.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Loftus whose telephone number is 571-272-7342. The examiner can normally be reached on M-F 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on 571-272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AL

/Kambiz Abdi/
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